**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ROBERT JACK FOLDENAUR,)	
)	
Petitioner,)	
)	
vs.)	NO. CIV-07-299-HE
)	
ERIC FRANKLIN,)	
)	
Respondent.)	

<u>ORDER</u>

Petitioner Robert Jack Foldenaur, a state prisoner appearing through counsel, instituted this action pursuant to 28 U.S.C. § 2254 seeking habeas relief. Consistent with 28 U.S.C. § 636(b)(1)(B) and (C), the matter was referred for initial proceedings to Magistrate Judge Valerie K. Couch, who has recommended that a motion to dismiss filed by the respondent be granted and the petition be dismissed as untimely pursuant to 28 U.S.C. § 2244(d). The magistrate judge concluded that the limitations period expired in June, 2006,[1] and that the petitioner had failed to demonstrate that the one-year limitations period should be equitably tolled.

The petitioner filed an objection contending that the limitations period should be equitably tolled because he pursued his judicial remedies in as timely a manner as was financially possible and has legitimate arguments which, due to his inability to obtain the effective assistance of counsel, he has been prevented from asserting. He also claims that to deny him relief because of his financial constraints would violate his rights to due

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[1]The petition was filed on March 9, 2007.

process and equal protection.

Having conducted a de novo review, the court concurs with Magistrate Judge Couch that the statutory year to file has expired with respect to the petitioner's claims, *see* 28 U.S.C. § 2244(d)(1)(A), and that, in the circumstances of this case, the limitations period is not subject to equitable tolling. Accordingly, the court adopts Magistrate Judge Couch's Report and Recommendation, **GRANTS** the respondent's motion [Doc. #13] and dismisses the petition for writ of habeas corpus.

IT IS SO ORDERED.

Dated this 27th day of June, 2007.

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JOE HEATON
UNITED STATES DISTRICT JUDGE